

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000929-001 DT

04/15/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

STATE OF ARIZONA

KENNETH M FLINT

v.

LISA JANE SCOUTEN (001)

LISA JANE SCOUTEN
7860 N HAYDEN RD #KK206
SCOTTSDALE AZ 85258

REMAND DESK-LCA-CCC
SCOTTSDALE CITY COURT

RECORD APPEAL RULE / REMAND

SCOTTSDALE CITY COURT

Cit. No. #1556852

Charge: 1) KNOWINGLY DISPLAY FALSE LICENSE PLATE
2) NO CURRENT VEHICLE REGISTRATION

DOB: 10/02/64

DOC: 06/09/03

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since its assignment on March 5, 2004. This decision is made within 60 days as required by Rule 9.9, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the Scottsdale City Court, and the memoranda submitted.

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Appellant, Lisa Jane Scouten, was charged in the Scottsdale City Court with two offenses: Fictitious Registration, a class 1 misdemeanor offense in violation of A.R.S. Section 28-2531(B)(1); and Expired Arizona Registration, a civil traffic matter in violation of A.R.S. Section 28-2153(A). Appellant was found responsible and guilty after a trial to the court on September 2, 2003. Appellant has filed a timely Notice of Appeal in this case.

The first issue raised by the Appellant is her claim that the trial court erred in failing to appoint an attorney to represent her. The record in this case indicates that Appellant's arraignment occurred on June 24, 2003. The pretrial was held July 25, 2003. At the time of pretrial, the trial itself was scheduled for September 2, 2003. However, Appellant waited until three (3) days prior to her trial date to file a written request for the appointment of counsel. Appellant's contention that she did not know she would have to represent herself unless she could afford her own attorney strains credibility.

The record is clear that Appellant was not entitled to a court-appointed attorney. Rule 6.1(b), Arizona Rules of Criminal Procedure, provides:

An indigent defendant shall be entitled to have an attorney appointed to represent him or her in any criminal proceeding which may result in punishment by loss of liberty and in any other criminal proceeding in which the court concludes that the interests of justice so require.

Federal law is clear regarding entitlement to a court-appointed attorney. The United States Supreme Court held in Scott v. Illinois¹ that an indigent defendant charged with shoplifting was not entitled to appointed counsel even though the possible sentencing range extended up to one (1) year imprisonment, but imprisonment was not imposed by the court.

Arizona does not utilize standards that differ from the Federal standards in regard to the appointment of counsel for indigent criminal defendants.² In Campa v. Fleming³, the Arizona Court of Appeals held that a criminal defendant was not entitled to a court-appointed attorney where that defendant was charged with Shoplifting, a class 1 misdemeanor offense, and the prosecutor avowed that no jail time would be requested by the State, and the trial judge ruled that no jail time would be imposed.

In this case, the Appellant was not sentenced to serve any jail time. More importantly, the prosecutor avowed to the court that the State would not request jail time. Therefore, Appellant was not entitled to a court-appointed attorney, and the trial judge did not err in refusing her request.

¹ 440 U.S. 367, 99 S.Ct. 1158, 59 L.Ed.2d 383 (1979).

² See Campa v. Fleming, 134 Ariz. 330, 656 P.2d 619 (App. 1982).

³ Id.

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Appellant also contends that the trial judge should have explained other options to her when he denied her request for a court-appointed attorney. Appellant contends that the trial judge should have offered her a continuance. However, the record reflects that Appellant did not file her written request for a court-appointed attorney until three (3) days prior to the trial. Appellant never requested a continuance in order to attempt to hire an attorney. In fact, the Appellant contended that she could not afford to hire her own counsel. It was not the trial judge's responsibility to give legal advice to Appellant if she was unprepared for her trial. If Appellant was unprepared, she should have requested a continuance.

The remaining issues raised by the Appellant concern the sufficiency of the evidence to warrant the conviction and finding of responsibility. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.⁴ All evidence will be viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved against the Defendant.⁵ If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.⁶ An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁷ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.⁸ The Arizona Supreme Court has explained in State v. Tison⁹ that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.¹⁰

⁴ State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, 608 P.2d 299 (1980); Hollis v. Industrial Commission, 94 Ariz. 113, 382 P.2d 226 (1963).

⁵ State v. Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

⁶ State v. Guerra, supra; State v. Girdler, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁷ In re: Estate of Shumway, 197 Ariz. 57, 3 P.3d 977, review granted in part, opinion vacated in part 9 P.3d 1062; Ryder v. Leach, 3 Ariz. 129, 77P. 490 (1889).

⁸ Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

⁹ Supra

¹⁰ Id. At 553, 633 P.2d at 362.

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This Court finds that the trial court's determination was not clearly erroneous and was supported by substantial evidence.

IT IS ORDERED affirming the judgment of guilt and of responsibility and the sanctions and sentence imposed.

IT IS FURTHER ORDERED remanding this matter back to the Scottsdale City Court for all further and future proceedings in this case.

/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT